



Atty. Dkt. No. 080618-0241

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Nicole ZITZMANN et al.

Title: LONG CHAIN N-ALKYL COMPOUNDS
AND OXA-DERIVATIVES THEREOF

Appl. No.: 10/031,145

International Filing Date: 8/10/2000

371(c) Date: 7/3/2002

Patent No.:

Grant Date:

Examiner: Kathrien Ann Cruz

Art Unit: 1617

Conf. No.: 6322

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which has not yet issued.

With the Notice of Allowance, the Patent Office determined that the patent was entitled to 747 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is

deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On January 7, 2010, the U.S. Court of Appeals for the Federal Circuit affirmed the September 30, 2008 decision of the United States District Court for the District of Columbia finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Kappos*, No. 2009-1120 (Jan. 7, 2010). The Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that "[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do not 'overlap' under section 154 (b)(2)."

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1157 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 1279 days

(b) Total Applicant delay: 122 days

Final PTA Determination: 1157 days

Applicants therefore respectfully request that the patent be accorded 1157 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect

information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

By _____



Date January 28, 2010

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Docket Number: 080618-0241
 Application Number: 10/031145
 Patent Number: N/A



	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Priority Date	08/10/1999	-915		
Edit Delete	International Filing Date	08/10/2000	-549		
	PCT National Stage Commencement Date	02/10/2002	0		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	07/03/2002	143		
	14 month From Application date	09/03/2003	570		
	3 Year Period Starts	02/10/2005	1,096		
Edit Delete	Restriction Requirement	06/29/2005	1,235	(665)	
	Restriction Requirement + 3 months	09/29/2005	1,327		
Edit Delete	Restriction Requirement Response Received at PTO	10/26/2005	1,354		27
Edit Delete	Non-Final Office Action	11/18/2005	1,377		
Edit Delete	Advisory Action	02/01/2006	1,452		
	Non-Final Office Action + 3 months	02/18/2006	1,469		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	02/21/2006	1,472		3
Edit Delete	Final Office Action	05/03/2006	1,543		
	Final Office Action + 3 months	08/03/2006	1,635		
Edit Delete	Final Office Action Response Received at PTO	10/13/2006	1,706		
Edit Delete	Notice of Appeal Received at PTO	11/03/2006	1,727		92
	Final Office Action Rsp. Rcv'd at PTO + 4 mo.	02/13/2007	1,829		
Edit Delete	Request For Continued Examination (including amendment)	03/05/2007	1,849	(753) 1279	
	3 Year Period Stopped	03/05/2007	1,849		
Edit Delete	Non-Final Office Action	05/31/2007	1,936		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/31/2007	2,028		
Edit Delete	Final Office Action	11/28/2007	2,117		
Edit Delete	Final Office Action Response Received at PTO	02/28/2008	2,209		
Edit Delete	Notice of Appeal Received at PTO	05/28/2008	2,299		
	Final Office Action Rsp. Rcv'd at PTO + 4 mo.	06/28/2008	2,330		

Edit	Non-Final Office Action	10/09/2008	2,433
Edit	IDS under 1.704(c)(8) filed at PTO	11/04/2008	2,459
Edit	Non-Final Office Action Rsp. Rcv'd at PTO	01/09/2009	2,525
Edit	Final Office Action	04/17/2009	2,623
Edit	Final Office Action Response Received at PTO	04/29/2009	2,635
	Final Office Action Rsp. Rcv'd at PTO + 4 mo.	08/29/2009	2,757
Edit	Advisory Action	10/16/2009	2,805
Edit	Notice of Allowance	10/29/2009	2,818
Edit	Issue Fee Paid	01/28/2010	2,909
	Projected Patent Grant Date	05/11/2010	3,012
		Totals:	1,279
		PTA:	1,157

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IP: 10.14.41.156

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